Tax residency rules for individual contractors and contractor limited companies

Contractors and their limited companies are subject to legislation that determines their UK tax residency status. Statutory residency tests determine whether a contractor pays tax in the UK, or in another tax jurisdiction overseas, or a combination of both.

"Until April 2013, the rules regarding residency for individuals were a combination of HMRC guidance, a small amount of legislation on the statute books, and a body of case law regarding disputes over whether individuals were UK residents for tax purposes or not," explains **James Abbott**, founder and head of tax at contractor accountant **Abbott Moore**.

"Due to the lack of clarity, and driven by high profile court cases such as the Gaines-Cooper case, the government decided to create legislation that would enable anyone to use the law to determine whether they are a UK tax resident or not. The result was the statutory residency tests introduced in April 2013."

Abbott adds that the legislation determining company residency is largely driven by where they are registered, managed from and double taxation treaties between tax jurisdictions

Statutory residency tests for individual contractors

"The statutory residency tests are in three parts," continues Abbott. "The first set of tests confirms that a contractor is definitely not a UK tax resident, the second confirms that a contractor definitely is a UK tax resident, and the final set is for those in between."

However, Abbott warns that even though the legislation is supposed to provide greater certainty, **HMRC's guidance accompanying the tests** is over 100 pages long, and contractors should seek professional advice to properly determine their status.

There are three tests a contractor can use to determine if they are definitely not a UK tax resident:

If you been resident in the UK at any time in the preceding three tax years, but spent fewer than 16 days in the UK, then you are not UK tax resident

If you have not been resident in the UK in preceding three tax years and spent fewer than 46 days in the UK during the tax year, then you are not a UK tax resident

If you work abroad full time for a complete tax year, and spend fewer than 91 days in the UK, then you won't be a UK tax resident. This test is aimed at individuals working abroad.

There are three tests that determine whether you are automatically a UK tax resident:

If you spend 183 days or more in the UK during a tax year, then you are definitely a UK tax resident

If you have a home in the UK for all or part of the year and you spend at least 91 days in that home, then you are definitely a UK tax resident. HMRC's guidance includes much more detail about this test, such as the definitions of a home, an overseas home and so on.

If you work full time in the UK

Sufficient ties tests

There is a grey area in between the first two sets of statutory tests, and this is resolved by the sufficient ties tests:

Family tie test – do you have close family still in the UK? This can include a spouse, partner, civil partner, or child under the age of 18

Accommodation tie test – if you have place available to live in the UK, which can include being able to live with a close relative

Work tie test – if you do more than three hours work on 40 days of the year

90-day tie test – if you spent more than 90 days in the UK during the year in more than one or both of the previous two tax years

Country tie test – is the UK in the current year the country that you spend more time in than any other?

"The final test is designed to catch permanent tax exiles who globetrot and never satisfy the residency requirements of any one jurisdiction," notes Abbott. "This would be unlikely to impact on contractors, who are typically based in at least one location for a reasonable amount of time in order that they can deliver on their contracts."

Depending on how many ties a contractor has, and whether they were a tax resident in the last three tax years, page 28 of HMRC's guidance has tables that determine how much time a contractor would be allowed to spend in the UK without becoming resident in the UK for tax purposes.

Dual residency

For most contractors, their tax residency and resulting tax affairs will be quite straightforward, and they will pay tax only in the UK, or in another jurisdiction. However, a contractor may have enough ties according to the above tests to be both a UK tax resident, and satisfy the residency requirements of another tax jurisdiction.

“The general rule over dual residency is that you can be taxed in two countries, but would not normally pay tax twice,” says Abbott. “Double taxation agreements between the UK and other countries can simplify a contractor’s tax arrangements.

“Even a worst-case scenario enables a contractor to knock off the tax paid in another country before calculating the UK liability, although the contractor may pay the maximum rate between the two countries.”

There are also typically tie-breaker clauses within double taxation treaties, which examine factors such as the contractor’s centre of economic interest, their main home and so on. The relevant clauses will set out where the contractor must pay tax, although some agreements retain the right to tax certain types of income.

For example, the UK’s tax laws usually reserve the rights to tax rental income, and the UK has a large number of non-resident landlords who still pay UK tax on their rental income.

“The general rule over dual residency is that you can be taxed in two countries, but would not normally pay tax twice”

James Abbott, Abbott Moore

Company tax residency rules

The rules on corporate residency vary considerably around the world, and Abbott urges contractors to speak to their accountant if concerned about the residency of their **contractor limited company**.

“The UK has two types of companies that are tax resident,” explains Abbott. “Those registered in the UK at **Companies House** in Cardiff,Edinburgh or Belfast are subject to corporation tax in the UK.

“The second category is those centrally managed or controlled in the UK, where the highest level of decision making occurs. This is to prevent the registration of companies in low tax jurisdictions such as Ireland or Jersey, but where the profit generating activities occur in the UK.

“Theoretically, it is possible that a contractor could spend time in Jersey and make all the company decisions there, return to the UK and not lift a finger, and then go back to Jersey again. However, in practice it is very difficult to separate out the different roles a contractor performs within their business, if they wish to remain in control.”

Companies are taxed on worldwide profits

If a **contractor limited company** is registered in the UK, then it is taxed in the UK on its worldwide profits. So, even when a contractor is working for an overseas client, their profits are taxed in the UK.

When working on a typical overseas contract where the contractor works from the client’s office and stays in a hotel, there is not enough permanence for local tax authorities to take notice. But this could change if a contractor opened an office to be located close to their client.

James Abbott

Owner

Abbott Moore LLP

James Abbott is the owner of Abbott Moore LLP and often speaks on freelancer / contractor tax matters. He has his own growing portfolio of contractor clients.

Abbott Moore LLP are PCG Accredited Accountants and specialise in providing tax advice to freelancers as well as dealing with their year end accounts and tax returns. **Read Full Profile...**

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Abbott explains: “A company’s tax status becomes more complex if they set up a permanent establishment in another tax jurisdiction. At that point, the local tax authorities take an interest and will try to tax the profits generated locally. Once again, double taxation treaties may help to mitigate any tax liabilities due to tax authorities outside of the UK.”

“Tax residency is a complex area and international tax treaties more so,” says Abbott. “Contractors uncertain about their residency, or that of their company, should speak to an expert.”

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